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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/078,497	02/21/2002	Avi Chriqui	1054AV1-US	4688

7590 09/16/2003

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EXAMINER

TRAN LIEN, THUY

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 09/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/078,497	CHRIQUI, AVI	
	Examiner	Art Unit	
	Lien T Tran	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. | 6) <input type="checkbox"/> Other: _____. |

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 12 is rejected under 35 U.S.C. 102(b) as being anticipated by Hahn et al.

Hahn et al disclose a dried mini-pasta. The pasta made in Hahn et al includes orzo which is a small pasta; thus, it is a mini-pasta. (see col. 5 line14)

The Hahn et al product differs from the claimed product in the process by which it is made. However, determination of patentability in “product-by-process” claim is based on the product itself, even though such claim is limited and defined by process. (see In re Thorpe 227 USPQ 964). The product of Hahn et al is the same as the claimed product.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hahn et al in view of Cuperus and Toh.

Hahn et al disclose a process of preparing pasta. The process comprising the steps of mixing wheat flour, water and calcium salt together to form a pasta paste, extruding the paste to form the pasta, predrying the pasta at a temperature ranging from about 100-180 degree F for at least .5 hour and drying the predried pasta at a temperature ranging from 130-200 degree F to obtain a moisture content of less than about 13%. The pasta can be in any shapes and sizes such as orzo, wheels, noodles, linguini, mafalde etc... (see columns 4-6)

Hahn et al do not teach sifting the flour with a centrifugal no. 40 sieve, steaming the pasta and the pressure during steaming, the flow rate of steam and the flow rate of water during mixing, the time and temperature of the predrying and drying as claimed and the pasta is maftul.

Cuperus teach a process for the production of dried pasta in which the pasta is precooked with steam to allow complete gelatinization of the starch. The dried pasta obtained is reconstituted for consumption in a short time. (see col. 2)

Toh teaches the preparation of rice noodles. He teaches to sift the flour to eliminate any coarse particles which would block the die holes during extrusion. The sifting may be carried out by a centrifugal sifter (see col. 2).

It would have been obvious to one skilled in the art to steam the pasta in the Hahn et al process as taught by Cuperus when desiring to make a pasta which can be reconstituted for consumption rapidly. The steaming precooks the pasta as taught by

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Cuperus. The flow rate of steam and pressure are result-effective variables which can be determined by one skilled in the art through routine experimentation. One will use a pressure and flow rate which give the most effective steaming to obtain the desired function. It would also have been obvious to one skilled in the art to sift the flour as taught by Toh to obtain uniform particle size and to eliminate coarse particles as taught by Toh. It would have been obvious to use a centrifugal sieve because it is a known device for sifting flour as taught by Toh. The sieve size depends on the size of the particles desired and can readily be determined by one skilled in the art. As to the time and temperature of the drying, this depends on the size of the pasta, the final moisture content desired, and the time and temperature used. For example, it would have been obvious to use higher temperature for a shorter period of time or vice versa. The time and temperature are parameters that can be readily determined through routine experimentation to obtain the most effective drying which will give the most optimum product. Hahn et al teach any pasta product can be made; thus, it would have been obvious to make maftul; the different types of pasta differ in the shape and size and Hahn et al teach pasta of various shapes and sizes can be made using the process. It would have been obvious to sort the pasta after drying when desiring different sizes or uniform size.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Murakami et al and Schade all teach processes for preparing dried pasta products.

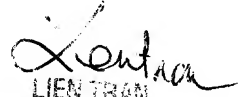
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 703-308-1868.

The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

September 7, 2003


LIEN TRAN
PRIMARY EXAMINER
Group 1702